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OFFICE OF PETITIONS

In re Application of : CORRECTED
Ashkenazi et al. : DECISION ON PETITION TO
Application No. 09/887879 : WITHDRAW HOLDING OF
Filed: 06/21/2001 : ABANDONMENT
Attorney Docket No. P1110P1C1 :

This is a corrected decision on the petition filed on 17 October, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply to the non-final Office action mailed on 23 December, 2005, which set a three (3)-month shortened statutory period for reply. Notice of Abandonment was mailed on 22 August, 2006.

Petitioners assert that the Notice mailed on 23 December, 2005, was never received.

In the absence of any irregularity in the mailing of the non-final Office action, there is a strong presumption that the non-final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the non-final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When

"Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the non-final Office action may have been lost after receipt rather than a conclusion that the non-final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to petitioners at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioners' counsel, registered patent attorney Diane L. Marschang, asserts that counsel inspected the file wrapper and docketing records and found no evidence that the Office action was ever received. Additionally, a copy of the docket report where the Office action would have been docketed and entered had it been received has been provided and has been referenced in the practitioner's statement.

The petitioners have made a sufficient showing of nonreceipt of the Office action. Accordingly, the holding of abandonment is withdrawn.

The petition is **GRANTED**.

The application file is being referred to the Technology Center's Technical Support Staff for remailing of the non-final Office action. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.


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